

# EJECTMENT WHEN THE RELATION OF MORTGAGEE AND MORTGAGOR SUBSISTS BETWEEN THE LANDLORD AND TENANT.

Doe d. SNELL AND SHORT v. TOM.

A NOTICE TO QUIT must be given previously to bringing ejectment whenever there is an existing tenancy from year to year. It sometimes happens, in order that the debt and interest may be gradually paid off, that a mortgagor becomes the tenant of the mortgagee at a rent certain. Now it had been decided that a mortgagee can maintain ejectment against a mortgagor, after the forfeiture of the mortgage, without any previous notice to quit, or demand of possession. (*Doe d. Fisher v. Giles*, 5 Bing. 421.) It was doubtful, however, whether a previous notice to quit was not necessary to enable a landlord mortgagee to bring ejectment against a tenant mortgagor, despite of a clause for immediate entry in case of default in payment of the principal, a tenancy being expressly created by the words of the mortgage-deed. This doubt has been removed by the case of which the title is given above.

It was an action tried at the Cornwall Spring Assizes, 1843. The premises in question had been first mortgaged by indenture, dated the 16th of April, 1802, by Thomas Tom, the father of the defendant, to one William Cole, for 300*l.*, for 1,000 years. By indenture, dated the 15th of November, 1805, this term was assigned to S. W. and R. B., who paid off the 300*l.* due to Cole, and advanced Tom the further sum of 20*l.*, making together 320*l.* By indentures of lease and release, dated the 20th and 3rd of April, 1819, between the said Tom, the father, of the first part, the said W. and B., of the second part, J. Baker, of the third part, and N. P., of the fourth part, after reciting that Tom was seized in fee, and that he had occasion for 150*l.*, it was witnessed that in consideration of 150*l.* paid to Tom by Baker, Tom granted, bargained, sold, and released to Baker the premises in question, called Lower New Park Tenement, to hold to and to the use of Baker, his heirs and assigns, forever, with a proviso for redemption on payment of the 150*l.* on a certain day, and a power of sale in default of payment. The same instrument then went on to assign the outstanding and satisfied term of 1,000 years to N. P., his executors, administrators, and assigns, for the residue of the said term, upon trust for better securing the payment of the said sum of 150*l.* and interest to Baker, and after payment thereof, upon trust for the said Tom and his assigns, and to attend the inheritance. The indenture then contained the following clause:—"For better securing the said principal money, &c., the said Thomas Tom doth hereby attorn tenant to the said John Baker, his executors, administrators, and assigns, for all the said premises, at *et* quarterly, to be recoverable by distress and sale, action of debt, and otherwise however." Baker remained the mortgagee until 1823, when by indentures of lease and release, dated the 28th and 29th of September, expressed to be made between Baker, of the first part, Tom, of the second part, and Short (one of the lessees of the plaintiff), of the third part, the mortgage was transferred to Short, he advancing as well the 150*l.* due to Baker as the further sum of 70*l.* Baker, however, never executed this deed; but it was proved that he received the 150*l.* Thomas Tom occupied the premises to his death, in 1836, since which time they had been occupied by the defendant.

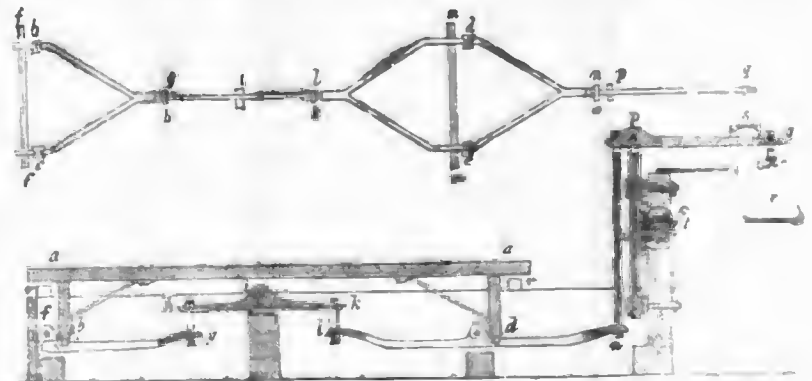
At the trial before Mr. Serjeant Atcherley, the first objection taken on the part of the defendant was, that by the deed of the 3rd of April, 1819, a tenancy was created which required six months' notice in order to bring ejectment. Another objection, founded on the Stamp Laws, but immaterial to our present purpose, was also taken; and verdict passed for the lessors of the plaintiff, with leave to the defendant to move to enter a nonsuit.

A rule nisi having been obtained, Mr. Crowder, Q.C., shewed cause, and for the first point relied on *Doe d. Garrod v. Olley* (12 Ad. & E. 481). In that case a mortgage deed, reciting a loan of 500*l.* at 5 per cent. interest, contained an agreement that the mortgagor, during his occupation of the mortgaged premises, should yield and pay for the same to the mortgagee the yearly rent or sum of 50*l.*, payable half-yearly, and that it should be lawful for the

mortgagee to use such remedies by distress and sale for the recovery of the said rent as landlords have on common demises; provided that the reservation of such rent should not prejudice the mortgagee's right to enter and eject the mortgagor at any time after default made in payment of the moneys secured, or any part thereof. Ejectment was brought, and, along with other objections, it was urged that the lessor of the plaintiff (the mortgagee) had not given notice to quit. The Court, however, held, that after default made in payment of the principal, and of one half-year's rent, the mortgagee might eject the mortgagor without any notice to quit, though he had treated the mortgagor as tenant by distraining on him for a previous year's rent.

Mr. Crowder's argument in answer to the first objection was not shaken, and Lord Denman, in giving the judgment of the Court, said—"Two objections to the plaintiff's case are stated; first, that although the action is by a mortgagee against the mortgagor, yet that the mortgage-deed has a clause by which the mortgagor attorned tenant to the mortgagee, at a rent of 8*l.* per annum, and that no notice to quit or demand of possession was proved. The answer is, that there is also a clause for immediate entry in case of default in payment of the mortgage-money, and, therefore, whatever be the meaning of the clause, the case is brought within the authority of *Doe d. Garrod v. Olley*, and no notice or demand was necessary."

In the case of *Doe d. Garrod v. Olley*, it was uncertain whether the relation of landlord and tenant was created by the language of the mortgage-deed; but the Court held, that, even though it were created, the right of the mortgagor to have notice to quit was obviated by the annexed proviso that the right to enter and eject him should not be prejudiced by the reservation of the rent. In *Doe d. Snell v. Tom*, an actual and unequivocal tenancy was created, but no proviso such as that in *Doe d. Garrod v. Olley* was annexed. The Court, however, seems to have thought that the power of sale in default of payment reserved by the mortgage-deed was equivalent to such a proviso. In each case the effect of the instrument was to create the relation of landlord and tenant, but with liberty for the landlord to treat the tenant as a trespasser at any time after any default. The substance of the two decisions may be expressed in the same terms, and the rule of law be thus announced:—"Where a mortgage-deed, for better securing the payment of the principal money and interest, creates the relation of landlord and tenant between the mortgagee and mortgagor, the landlord will be at liberty to treat the tenant as a trespasser at any time after any default, unless the mortgagee be barred by express stipulations, or implied, by the absence from the mortgage-deed of a clause of entry in case of default in payment of the mortgage-money."



DESCRIPTION OF A WEIGH-BRIDGE CONSTRUCTED AT ANGERS, WITH A CENTUPLE DIMINUTION OF THE BALANCE WEIGHT.

FIGURES 1 and 2 represent a weigh-bridge that has been constructed in the School of Art and Industry at Angers. It was first described by Janlez in his *Cours Élémentaire de Mécanique Industrielle*, Part 1, p. 130. Fig. 2 is a vertical section of the apparatus; fig. 1 a horizontal section of the leverage employed. *a* a fig. 2 is the bridge or scale in which the mass to be weighed is placed, and rests on the four points *b, c, d, e*. The pressure which it exerts on the two points *b* and *c* is received by the lever *fg*, the proportion of the arms of which is thus expressed:—*fb : fg = 1 : 10*, so that *g* receives one-tenth of the pressure which *a* exerts on *b* and *c*: this pressure is transferred by means of the sliding bar *gh* to the lever *hik*, the fulcrum of which is at *i*, and the arms *ih* and *ik* equal, and from *k* again by means of the sliding bar *kl*, to the lever *lmn*, the arms of which, *ml*, *mn*, are equal, so that as *hik* and *lmn* merely transport pressure, the point *n* receives one-tenth of the pressure exerted on the points *b* and *c*. The pressure which the bridge *a* exerts on the two points *d* and *e* is diminished in a similar manner by the lever *mdn*, so that, the pro-

portion of its arms being as follows, *md : mn = 1 : 10*, the point *n* receives one-tenth of it only. Thus the amount of pressure exerted on the point *n* is ten times smaller than that exerted on the point *a*. This pressure is propagated by the bar *no* to the lever *opq*, in which *p* is the fulcrum, and *op : pq = 1 : 10*. A mass, therefore, placed in the scale, which hangs at *g*, will be in equilibrium with a mass placed on the bridge *a*, when the latter weighs one hundred times as much as the former.

It is, of course, assumed that the scales, when unloaded, are in equilibrium, which may be effected by placing weights on the scale *r*, or, as in the ordinary weigh-bridge, by a sliding weight on the arm *pq* of the lever *opq*. The state of equilibrium is indicated, as in the common weigh-bridges, by the index *s*. The position of rest is given by turning the handle of the wheel *t* so as to force down the toothed bar *u*, in the upper part of which is the bed for the axis of the lever *opq*, and when the bar *u* is lowered, the bar *nn* will sink until the bridge *a* rests on the bearers *c* &c. When the apparatus is in this position, weights can be placed on *a* or taken off it, without injury to the moveable parts from the unavoidable concussion. When the apparatus is to be put in action, the bar *w* is raised again, and its descent prevented by ordinary means. A wall must, of course, be raised between *a* and the bar *n*, to save the latter from accidental violence.—*Polytechnisches Central Blatt*.

A bronze statue, cast after a model by Schnaathaler, of the Margrave Frederick of Bayreuth, has lately been executed, at the command of the King of Bavaria, and sent to the university of Erlangen, of which the Margrave was the founder. Two models of statues by Teneroni, one of the present king of the Two Sicilies, and the other of Bolivar, have been sent from Rome to Munich to be cast in

bronze by Stiglmayr. The statue of Bichat, the celebrated physician, and author of *Recherches sur la Vie et la Mort*, was inaugurated on the 20th ult. at Bourg, with great pomp. Bichat is represented contemplating the movement of life in an infant, whilst at his feet lies a half-dissolved body. The statue of the Abbé de l'Espérance was last week inaugurated at Versailles with great ceremony.